

Memorandum

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To: ALL DISTRICT DEPUTY DIRECTORS
FOR ENVIRONMENTAL PLANNING
ALL DISTRICT ENVIRONMENTAL
OFFICE/BRANCH CHIEFS

Date: June 7, 2007

File: NEPA Delegations

From: JAY NORVELL
Chief
Division of Environmental Analysis

Subject: Interim Policy – Assignment of Responsibility for Categorical Exclusion
Determinations

Background

Section 6004 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) allows any state to enter into a Memorandum of Understanding (MOU) with the Federal Highway Administration (FHWA) to assume responsibility for determining whether a proposed project qualifies as a categorical exclusion (CE) specifically designated by the U.S. Department of Transportation Secretary, as well as responsibilities for federal environmental consultation and coordination for those projects. The delegated approval of Categorical Exclusions is limited to those actions specifically listed or referenced in the Section 6004 MOU between Caltrans and the FHWA, executed on June 6, 2007. A fully executed copy of the MOU can be found at:
http://www.dot.ca.gov/hq/env/nepa_pilot/html/categorical_exclusion.htm

For those projects that meet the requirements of a CE, but are not covered under the provisions of the Section 6004 MOU (i.e., are not specifically listed as CE's), Caltrans will in the near future have the authority to approve those projects under a separate MOU pursuant to SAFETEA-LU, Section 6005, the Surface Transportation Project Delivery Pilot Program. In the interim, those projects not eligible for approval under Section 6004 MOU or the 2003 Programmatic CE Agreement will continue to require approval by the FHWA.

Changes to the Categorical Exemption/Categorical Exclusion Form

To address the provisions of the Section 6004 MOU, an interim Categorical Exemption/ 6004 Categorical Exclusion (CE/6004 CE) form has been developed. The new form requires the applicable Categorical Exclusion (CE) activity be specifically

ALL DISTRICT DEPUTY DIRECTORS
FOR ENVIRONMENTAL et., al.

June 7, 2007

Page 2

identified by number. Based on FHWA's NEPA regulations at 23 CFR 771.117 and Appendix A of the Section 6004 MOU, the planner will identify the applicable activity number from one of the following: (1) the 'C' list, (2) the 'D' list, (3) Appendix A of the MOU. Once identified, the applicable activity number will then be entered on the CE/6004 form.

A new Interim Categorical Exclusion Checklist is attached and lists all of the CE activities discussed above. Use of the checklist is strongly recommended as a valuable tool for environmental staff in scoping projects and documenting CE decisions.

For those projects that can be approved under the 2003 Programmatic CE Agreement or require FHWA signature, please continue to use the CE Form dated November 2005.

Applicability

This Interim Policy is effective immediately and will be superseded by another memorandum after the Section 6005 MOU is executed.

Signature Authority

The Senior Environmental Planner or her/his designee determines if the CE/CE form is ready for signature. The Senior Environmental Planner and the Project Manager or District Local Assistance Engineer (DLAE), as appropriate, both sign the CE/CE form. The Senior Environmental Planner signature may not be delegated.

If you have any questions regarding this memorandum, please call Cindy Adams, NEPA Delegation Manager at (916) 653-5157.

Attachments

1. Interim Categorical Exemption/6004 Categorical Exclusion Form
2. Interim Categorical Exemption/6004 Categorical Exclusion Checklist

CATEGORICAL EXEMPTION/6004 CATEGORICAL EXCLUSION DETERMINATION FORM

Revised June 7, 2007

Dist.-Co.-Rte. (or Local Agency) _____ P.M/P.M. _____ E.A. (State project) _____ Federal-Aid Project No. (Local project)/ Proj. No. _____

PROJECT DESCRIPTION: (Briefly describe project, purpose, location, limits, right-of-way requirements, and activities)*Enter project description in this text box. Use Continuation Sheet, if necessary***CEQA COMPLIANCE** (for State Projects only)

Based on an examination of this proposal, supporting information, and the following statements (See 14 CCR 15300 et seq.):

- If this project falls within exempt class 3, 4, 5, 6 or 11, it does not impact an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law.
- There will not be a significant cumulative effect on this project and successive projects of the same type in the same place, over time.
- There is not a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.
- This project does not damage a scenic resource within an officially designated state scenic highway.
- This project is not located on a site included on any list compiled pursuant to Govt. Code § 65962.5 ("Cortese List").
- This project does not cause a substantial adverse change in the significance of a historical resource.

CALTRANS CEQA DETERMINATION☐ **Exempt by Statute.** (PRC 21080[b]; 14 CCR 15260 et seq.)

Based on an examination of this proposal, supporting information, and the above statements, the project is:

☐ **Categorically Exempt. Class ____.** (PRC 21084; 14 CCR 15300 et seq.)☐ **Categorically Exempt. General Rule exemption.** [This project does not fall within an exempt class, but it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment (CCR 15061[b][3])]

Signature: Environmental Branch Chief _____

Date _____

Signature: Project Manager _____

Date _____

NEPA COMPLIANCE

In accordance with 23 CFR 771.117, and based on an examination of this proposal and supporting information, the State has determined that this project:

- does not individually or cumulatively have a significant impact on the environment as defined by NEPA and is excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), and
- has considered unusual circumstances pursuant to 23 CFR 771.117(b)
(<http://www.fhwa.dot.gov/hep/23cfr771.htm> - sec. 771.117).

In non-attainment or maintenance areas for Federal air quality standards, it is determined that this project comes from a currently conforming Regional Transportation Plan and Transportation Improvement Program or is exempt from regional conformity.

CALTRANS NEPA DETERMINATION

The State has been assigned, and hereby certifies that it has carried out, the responsibility to make this determination pursuant to Chapter 3 of Title 23, United States Code, Section 326 and a Memorandum of Understanding (MOU) dated June 7, 2007, executed between the FHWA and the State. The State has determined that the project is a Categorical Exclusion under:

- 23 CFR 771 activity (c)(____)
- 23 CFR 771 activity (d)(____)
- Activity ____ listed in the MOU between FHWA and the State

Signature: Environmental Branch Chief _____

Date _____

Signature: Project Manager/DLA Engineer _____

Date _____

Briefly list environmental commitments on continuation sheet. Reference additional information, as appropriate (e.g. air quality studies, documentation of exemption from regional conformity, or use of CO Protocol; §106 commitments; § 4(f); § 7 results; Wetlands Finding; Floodplain Finding; additional studies; and design conditions). **Revised June 7, 2007**

CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM
Continuation Sheet

Interim Categorical Exclusion Checklist

1. Does Project Qualify for SAFETEA-LU Section 6004 Categorical Exclusion (check applicable box)?

1.1 Activity listed in 23 CFR 771.117(c):

<input type="checkbox"/>	1	Activities which do not involve or lead directly to construction	<input type="checkbox"/>	11	Determination of payback under <u>23 CFR part 480</u> for property previously acquired with Federal-aid participation
<input type="checkbox"/>	2	Utility installations along or across a transportation facility	<input type="checkbox"/>	12	Improvements to existing rest areas and truck weigh stations.
<input type="checkbox"/>	3	Bicycle and pedestrian lanes, paths, and facilities	<input type="checkbox"/>	13	Ridesharing activities
<input type="checkbox"/>	4	Activities included in the State's <i>highway safety plan</i> under <u>23 U.S.C. 402</u>	<input type="checkbox"/>	14	Bus and rail car rehabilitation
<input type="checkbox"/>	5	Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action	<input type="checkbox"/>	15	Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons
<input type="checkbox"/>	6	Installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction	<input type="checkbox"/>	16	Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand
<input type="checkbox"/>	7	Landscaping	<input type="checkbox"/>	17	Purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE
<input type="checkbox"/>	8	Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur	<input type="checkbox"/>	18	Track and railbed maintenance and improvements when carried out within the existing right-of-way
<input type="checkbox"/>	9	Emergency repairs under <u>23 U.S.C. 125</u>	<input type="checkbox"/>	19	Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site
<input type="checkbox"/>	10	Acquisition of scenic easements	<input type="checkbox"/>	20	Promulgation of rules, regulations, and directives

---OR---

1.2. Activity listed in examples in 23 CFR 771.117(d):

<input type="checkbox"/> 1	Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).	<input type="checkbox"/> 7	Approvals for changes in access control.
<input type="checkbox"/> 2	Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.	<input type="checkbox"/> 8	Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.
<input type="checkbox"/> 3	Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.	<input type="checkbox"/> 9	Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
<input type="checkbox"/> 4	Transportation corridor fringe parking facilities.	<input type="checkbox"/> 10	Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
<input type="checkbox"/> 5	Construction of new truck weigh stations or rest areas.	<input type="checkbox"/> 11	Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.
<input type="checkbox"/> 6	Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.	<input type="checkbox"/> 12	Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

---OR---

1.3 Appendix A of MOU for State Assumption of Responsibilities for Categorical Exclusions:

<input type="checkbox"/> 1	Construction, modification, or repair of storm water treatment devices (e.g., detention basins, bioswales, media filters, infiltration basins), protection measures such as slope stabilization, and other erosion control measures throughout California	<input type="checkbox"/> 5	Projects throughout California undertaken to assure the creation, maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife (e.g., revegetation of disturbed areas with native plant species; stream or river bank revegetation; construction of new, or maintenance of existing fish passage conveyances or structures; restoration or creation of wetlands).
<input type="checkbox"/> 2	Replacement, modification, or repair of culverts or other drainage facilities throughout California.	<input type="checkbox"/> 6	Routine repair of facilities due to storm damage throughout California, including permanent repair to return the facility to operational condition that meets current standards of design and public health and safety without expanding capacity (e.g., slide repairs, construction or repair of retaining walls).
<input type="checkbox"/> 3	Routine seismic retrofit of facilities throughout California to meet current seismic standards and public health and safety standards without expansion of capacity.	<input type="checkbox"/> 7	Airspace leases throughout California.
<input type="checkbox"/> 4	Drilling of test bores/soil sampling throughout California.		

2. **If project does qualify under the Section 6004 above, does project include any unusual circumstances?**

Yes <input type="checkbox"/> No <input type="checkbox"/>	Significant environmental impacts;
Yes <input type="checkbox"/> No <input type="checkbox"/>	Substantial controversy on environmental grounds;
Yes <input type="checkbox"/> No <input type="checkbox"/>	Significant impact on properties protected by section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or
Yes <input type="checkbox"/> No <input type="checkbox"/>	Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action

If you answered "yes" to any of the items above, then we must conduct appropriate environmental studies to determine if the 6004 CE classification is proper.

If you answered "no" to all of the above, prepare and approve the categorical exclusion using the Categorical Exemption/6004 Categorical Exclusion form. Remember a Senior Environmental Planner must sign the CE form.

---OR---

3. If the project does not qualify under Section 6004 above, the project may still be eligible for exclusion under the existing Programmatic Categorical Exclusion.

3.1. PCE Conditions

<input type="checkbox"/> Yes <input type="checkbox"/> No	Does the action involve acquisition of more than minor amounts of temporary or permanent strips of R/W? A minor amount of r/w normally is not more than 10 acres and involves no more than 4 relocations. In situations where relocation of residences or businesses would occur, an analysis will be performed to determine the potential for community or environmental justice impacts; if the potential for these impacts exists, the project would not be deemed eligible for treatment as a PCE under this agreement.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Does the action conform to the Air Quality Implementation Plan, which is approved or promulgated by the Environmental Protection Agency in air quality non-attainment areas?
<input type="checkbox"/> Yes <input type="checkbox"/> No	Does the action not involve a determination of adverse effect for properties on or eligible for the National Register of Historic Places?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Does the action involve any known hazardous materials sites or known hazardous materials remains within the proposed or existing right-of-way, with the exception of aerially deposited lead where levels do not exceed 350 parts per million or five milligrams per liter soluble?
<input type="checkbox"/> Yes <input type="checkbox"/> No	Does the action require an individual Section 4(f) determination? A programmatic 4(f) determination may be involved, provided that FHWA has concurred in the 4(f) determination. The Department will conduct the necessary research and coordination to ascertain that the conditions associated with each programmatic 4(f) evaluation have been met and will obtain FHWA approval for its use.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Does the action require formal Section 7 Consultation for federally listed endangered or threatened species or critical habitat?
<input type="checkbox"/> Yes <input type="checkbox"/> No	Is the action is consistent with the State's Coastal Zone Management Plan, if applicable?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Does the action involve the acquisition of agricultural land with a total score of 60 points or greater Site Assessment points in Part VI of Natural Resource Conservation Service (NRCS) Form AD 1006?
<input type="checkbox"/> Yes <input type="checkbox"/> No	Does the action include wetland impacts of more than 1.5 acres or involvement with the NEPA/404 process? Enough information to issue a wetland finding must be included in the PCE documentation.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Does the action involve construction in, across, or adjacent to a river designated as a component or proposed for inclusion in the National System of Wild and Scenic Rivers published by the U.S. Department of Interior/U.S. Department of Agriculture?
<input type="checkbox"/> Yes <input type="checkbox"/> No	Does the action encroach on a regulatory floodway, or in the event that the Federal Emergency Management Agency (FEMA) has not designated a regulatory floodway, does the action significantly encroach on the base flood plain?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Does the action require any U.S. Coast Guard construction permits?

4. If project does qualify under the PCE, does project include any unusual circumstances?

Yes <input type="checkbox"/> No <input type="checkbox"/>	Significant environmental impacts;
Yes <input type="checkbox"/> No <input type="checkbox"/>	Substantial controversy on environmental grounds;
Yes <input type="checkbox"/> No <input type="checkbox"/>	Significant impact on properties protected by section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or
Yes <input type="checkbox"/> No <input type="checkbox"/>	Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action

If you answered “yes” to any of the items in 3 or 4 above, then the project does not qualify for any form of delegated categorical exclusion. However, the project may still qualify as a categorical exclusion that would need FHWA approval. Contact your FHWA team leader.

If you answered “no” to all of 3 and 4 above, prepare and approve the categorical exclusion and check the Programmatic Categorical Exclusion box.

5. Have all other federal environmental laws, regulations, and executive orders been complied with¹?

Environmental Statutory or Regulatory Compliance	Does Project Trigger Statute or Regulation?	Date and type of Technical Study or Memo to File or Field Survey	Outcome of Agency Coordination (Concurrence Type and Date)	Notes, Documentation Reference &/or Explanation
Historic Preservation (Section 106)				
Executive Order on Floodplains				
Wetland Protection				
Coastal Zone				
Wild and Scenic Rivers				
Section 4(f) <input type="checkbox"/> De minimis <input type="checkbox"/> Programmatic <input type="checkbox"/> Individual				
Endangered Species (Section 7 FESA) Effect Determination: <input type="checkbox"/> No effect <input type="checkbox"/> Not likely to adversely effect <input type="checkbox"/> Likely to adversely effect				
Farmland Protection				
Noise (23 CFR 772)				
Hazardous Waste/Material				
Environmental Justice				
Project-Level Air Quality (CO, PM Hotspot and MSAT)				
Other (i.e., Visual)				

6. Environmental Permits anticipated

Permit	Anticipated (Y/N)
404 (USACE) <input type="checkbox"/> Nationwide # _____ <input type="checkbox"/> Individual	
Section 401 Certification	
Coastal Development Permit	
1602 Streambed Alteration	
Other (list):	

¹ Be sure that the proposed CE type is concordant with all regulatory compliance required for the action.

7. Is project exempt from air quality conformity?

**PROJECTS EXEMPT FROM CONFORMITY DETERMINATION
AS PER 40 CFR 93.126**

Safety

- ☐ Railroad/highway crossing
- ☐ Hazard elimination program
- ☐ Safer non-federal-aid system roads
- ☐ Shoulder improvements
- ☐ Increasing sight distance
- ☐ Safety improvement program
- ☐ Traffic control devices and operating assistance other than signal projects
- ☐ Railroad/highway crossing warning devices
- ☐ Guardrails, median barriers, crash cushions
- ☐ Pavement resurfacing or rehabilitation
- ☐ Pavement marking demonstration
- ☐ Emergency relief (23 U.S.C. 125)
- ☐ Fencing
- ☐ Skid treatments
- ☐ Safety roadside rest areas
- ☐ Adding medians
- ☐ Truck climbing lanes outside the urbanized area
- ☐ Lighting improvements
- ☐ Widening narrow pavements or reconstructing bridges (no additional travel lanes)
- ☐ Emergency truck pullovers

Mass Transit

- ☐ Operating assistance to transit agencies
- ☐ Purchase of support vehicles
- ☐ Rehabilitation of transit vehicles
- ☐ Purchase of office, shop, and operating equipment for existing facilities
- ☐ Purchase of operating equipment for vehicles (e.g. radios, fareboxes, lifts, etc.)
- ☐ Construction or renovation of power, signal, and communications systems
- ☐ Construction of small passenger shelters and information kiosks
- ☐ Reconstruction or renovation of transit buildings and structures (e.g. rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)
- ☐ Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
- ☐ Purchase of new busses and rail cars to replace existing vehicles or for minor expansions of the fleet
- ☐ Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR Part 771

Air Quality

- ☐ Continuation of ride-sharing and van-pooling promotion activities at current levels
- ☐ Bicycle and pedestrian facilities

Other

- ☐ Specific activities which do not involve or lead directly to construction, such as: Planning and technical studies, Grants for training and research programs, Planning activities conducted pursuant to Titles 23 and 49 U.S.C. Federal-aid systems revisions
- ☐ Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action
- ☐ Noise attenuation

- ☐ Emergency or hardship advance land acquisitions (23 CFR Part 712.204(d))
- ☐ Acquisition of scenic easements
Plantings, landscaping, etc.
- ☐ Sign removal
- ☐ Directional and informational signs
- ☐ Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities)
- ☐ Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational, or capacity changes.

- ☐ Exempt from conformity per 40 CFR 93.126

8. If the project does not qualify under 40 CFR 93.126, is project exempt from regional air quality conformity?

**PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES
AS PER 40 CFR 93.127²**

- ☐ Intersection channelization projects.
 - ☐ Intersection signalization projects at individual intersections.
 - ☐ Interchange reconfiguration projects.
 - ☐ Changes in vertical and horizontal alignment.
 - ☐ Truck size and weight inspection stations.
 - ☐ Bus terminals and transfer points.
-
- ☐ Project level conformity determination completed
 - ☐ Exempt from regional conformity per 40 CFR 93.127

**PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES
AS PER 40 CFR 93.128**

- ☐ Traffic signal synchronization projects.³

² If the project is exempt from regional emission analysis, the local effect with respect to CO concentrations must be considered to determine if hot-spot analyses are required prior to making a project-level conformity determination. This requirement is applicable if the proposed project includes intersection channelization, intersection signalization, interchange reconfiguration, changes in vertical and horizontal alignment, if it becomes federally funded in the future, or if the project is regionally significant.

³ If the project is from a non-conforming Plan, the traffic signal synchronization project must be included in the regional emission analysis. If the traffic signal synchronization project is from a conforming Plan, it is exempt from regional emission analysis, but is not automatically exempt from the intersection air quality analysis (hot spot screening).

If project is not exempt from regional air quality conformity:

- ☐ Identify the RTP and RTIP including dates and page numbers that the project is contained in⁴.

⁴ If using the checklist as a scoping tool, check the Regional Transportation Plan (RTP) and the Regional Transportation Improvement Program (RTIP) early. If using the checklist for support documentation, make sure to re-check the RTP and the RTIP before signing the CE.